

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 vs.

NO: CR-15-4268 JB

CR-15-4275 JB

6 ANGEL DELEON, et al.,

CR-16-1613 JB

7 Defendants.

8 Transcript of Sentencing before The Honorable

9 James O. Browning, United States District Judge,

10 Albuquerque, New Mexico, commencing on May 10, 2019.

11 For the Plaintiff: Ms. Maria Armijo

12 Mr. Randy Castellano

13 For the Defendant Chris Garcia:

14 Mr. Chris Adams

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21 Jennifer Bean, FAPR, RDR, RMR, CCR

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1 THE COURT: All right. Good morning. I
2 appreciate everyone making themselves available to me
3 this morning. The Court will call United States of
4 America versus Christopher Garcia, Criminal Matter
5 No. 15-4268-JB; CR-15-4275-JB; and CR-16-1613-JB. If
6 counsel will enter their appearances for the
7 Government.

8 MS. ARMIJO: Good morning, Your Honor.
9 Maria Armijo and Randy Castellano on behalf of the
10 United States.

11 THE COURT: Ms. Armijo, Mr. Castellano,
12 good morning to you.

13 And for the Defendant.

14 MR. ADAMS: Chris Adams on behalf of Chris
15 Garcia. Ms. Sirignano is in trial in another
16 courtroom.

17 THE COURT: I understand. Mr. Adams, good
18 to see you.

19 Mr. Garcia, good morning to you.

20 THE DEFENDANT: Good morning.

21 THE COURT: Mr. Garcia, have you reviewed
22 the presentence report that Probation has prepared?
23 And I believe they also have a sealed addendum that
24 they have prepared, so -- and then I think this
25 morning -- yes, I have it -- they issued another

1 Attachment A to the presentence report. I think
2 those are the only three documents that Probation has
3 prepared in this matter. Is that correct, Ms. Cord?

4 PROBATION OFFICER: Yes, Your Honor.

5 THE COURT: Have you reviewed those three
6 documents, Mr. Garcia?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And Mr. Adams, have you
9 reviewed with Mr. Garcia the presentence report, the
10 sealed addendum, and then the Attachment A that came
11 in this morning?

12 MR. ADAMS: Yes, sir, I have.

13 THE COURT: All right. You have some
14 objections. I believe you had two, if I recall. One
15 dealt with whether the Defendant is a career
16 offender, which turned on whether New Mexico has --
17 whether that aggravated battery with a deadly weapon
18 is a crime of violence. I have about a 14-page
19 opinion that I have just about completed. I don't
20 have it out. But if you want to say anything on the
21 issue -- as you probably saw in United States v.
22 Folsom here rather recently, I dealt with that issue,
23 and so I am prepared to get that opinion to you. But
24 if there is something else you want to say on the
25 issue, you're welcome to do so.

1 MR. ADAMS: No, sir. We'll stand on our
2 pleadings. And I guess the only additional thing is:
3 Only 14 pages?

4 THE COURT: Yeah, well, I was trying to get
5 it ready for today. I didn't quite get us there. I
6 hate to disappoint you.

7 MR. ADAMS: No, that's fine.

8 THE COURT: But that was the only objection
9 you had; correct?

10 MR. ADAMS: There was a second, and it's
11 been incorporated.

12 THE COURT: That's the one about the CNM --

13 MR. ADAMS: -- associate's degree.

14 THE COURT: And as part of this opinion, I
15 will order Probation to include that if they haven't
16 already done it.

17 MR. ADAMS: They have.

18 THE COURT: I will sustain that objection.

19 MR. ADAMS: Thank you very much.

20 THE COURT: Any other objections, Mr.
21 Adams?

22 MR. ADAMS: No, sir.

23 THE COURT: All right. And the reason that
24 I asked Probation to issue another Bruce memo is that
25 they were including in what they were recommending to

1 me three conditions that they had not put into the
2 Bruce memo. Do you want me to point those out to you
3 so you don't have to reread everything?

4 MR. ADAMS: Yes, sir, please.

5 THE COURT: They wanted to include "you
6 must not use or possess alcohol," and they also
7 wanted to say "you must not knowingly purchase,
8 possess, distribute, administer, or otherwise use any
9 psychoactive substances." And then they also didn't
10 want Mr. Garcia to communicate or otherwise interact
11 with any known gang members. So those are the three
12 that were not in the original Attachment A, but
13 they're part of the new Attachment A. Do you need
14 time to discuss those with Mr. Garcia, or are they
15 okay with you?

16 MR. ADAMS: They're okay with him.

17 THE COURT: All right. Because if you need
18 time, we can certainly take it.

19 Let me go to paragraph 6 on page 8. There
20 was one change that I thought we may need to make.
21 Paragraph 6, page 8, if you will look at that third
22 line. It says, "Acknowledging that the Defendant
23 knowingly waives the right to appeal the Defendant's
24 convictions," and it says, "any sentence within the
25 guideline range."

1 My review of the plea agreement didn't
2 include that language "within the guideline range."
3 It just said, "Any sentence, including any fine,
4 imposed in conformity with the Rule 11(c)(1)(C)
5 agreement." Is that your understanding?

6 MR. ADAMS: Yes, sir. And thank you for
7 catching that. I missed it.

8 THE COURT: Is that all right? We'll take
9 out those words "within the guideline range," Ms.
10 Armijo?

11 MS. ARMIJO: Yes, Your Honor.

12 THE COURT: All right.

13 THE COURT: All right. Any other
14 objections or issues with the PSR or the addendum?

15 MR. ADAMS: Judge, I think consistent with
16 what you just did under the 1613 case, we should make
17 the same amendment on page 15, paragraph 27.

18 THE COURT: All right. Is that agreeable,
19 Ms. Armijo?

20 MS. ARMIJO: Yes, Your Honor.

21 THE COURT: Ms. Cord, does that work for
22 you?

23 PROBATION OFFICER: Yes, Your Honor.

24 THE COURT: Any other objections or issues
25 with the PSR?

1 MR. ADAMS: No, sir.

2 THE COURT: And Ms. Armijo, does the
3 Government now move for that third-level adjustment
4 downward for acceptance of responsibility?

5 MS. ARMIJO: Yes, Your Honor, we do.

6 THE COURT: All right. And I assume there
7 is no objection to that, Mr. Adams?

8 MR. ADAMS: No objection.

9 THE COURT: And you'll provide me a motion
10 and order after the hearing?

11 MS. ARMIJO: I will, Your Honor.

12 THE COURT: All right. With that, the
13 offense level is 43. The criminal history category
14 is 6, establishing a life-imprisonment range of life.
15 However, under Rule 11(c)(1)(C) of the Federal Rules
16 of Criminal Procedure, the parties have presented the
17 Court with a plea agreement which includes a specific
18 sentence of 360 months as to each of case numbers
19 2:15-CR-04268 and 1613, and concurrently to the
20 guideline range noted in 2:15-CR-04275. Is that
21 correct, Mr. Adams?

22 MR. ADAMS: It is, Your Honor.

23 THE COURT: All right. Mr. Adams, if you
24 wish to speak on behalf of Mr. Garcia, and in your
25 remarks, if you will indicate why you think a

1 variance from life to 30 months is appropriate for
2 Mr. Garcia.

3 MR. ADAMS: We would love a variance to 30
4 months, but we are talking about 30 years.

5 THE COURT: All right. You're talking
6 about 30 years.

7 Ms. Armijo?

8 MS. ARMIJO: And Your Honor, before we
9 start, I know this had originally been set at 9:30
10 and we had given Victim's Rights information to 9:30.
11 And in the chaos of coming down here, we did not tell
12 Mr. Marcantel until this morning that it was set at
13 8:30. So he is on his way here, and I thought maybe
14 we could do anything legal or anything, but if
15 possible, could we at least wait for the actual
16 sentencing portion until Mr. Marcantel is here?

17 If Mr. Garcia wants to make any statements,
18 I'm sure that Mr. Marcantel would like to at least
19 hear that, as well.

20 THE COURT: All right. Do you have any
21 problem with the Court hearing now the portion of
22 Mr. Adams?

23 MS. ARMIJO: No, not at all. I was
24 thinking anything legally, and if we need to
25 discuss -- but for the last end portion.

1 THE COURT: At whatever point you want us
2 to stop, you just tell us to stop, because it was
3 originally set for 9:30 and then we moved it.

4 All right, Mr. Adams.

5 MR. ADAMS: Judge, as I approached the
6 sentencing memo, we had done -- because this had
7 started as a potential capital case, we had done a
8 good bit of mitigation work, and we had that material
9 available and I made the choice just to be very brief
10 in the sentencing memo. And unless the Court would
11 like me to be longer, my intention would be to be
12 very brief here.

13 The parties were negotiating at arm's
14 length to the extent the defense ever negotiates at
15 arm's length with the Government. We were on the eve
16 of trial when this plea arrangement was worked out.
17 The Government was fully aware of the evidence that
18 proved -- fully aware of Mr. Garcia and his role in
19 the offense and his criminal history, and they
20 elected to enter into this plea agreement with us.

21 And I believe, without putting words into
22 their mouth, they thought as close as they were to
23 trial and understanding the case fully and
24 understanding that the proof, that a life sentence
25 was not necessary to serve the ends of justice for

1 Mr. Garcia. He's 43 years old, he has a liver
2 disease, and he is a candidate to one day be released
3 as an old man. And he very much wanted the light at
4 the end of the tunnel. Candidly, we would have
5 preferred that light to be a 25-year 11(c)(1)(C), but
6 we worked out a 30-year, and we believe it's
7 appropriate, considering he was an involved member of
8 SNM. He was involved in acts of violence, he was
9 involved in numerous drug sales; but he was not the
10 leader; he was not the shot caller; he was not the
11 guy running the hit crew. So respectfully, we would
12 ask the Court to please accept the arrangement worked
13 out by the parties.

14 Our other request -- and I'm happy to go
15 further, if the Court would like. But this is a
16 severe sentence that we're asking the Court to accept
17 for very bad criminal activity. But we don't think a
18 life sentence would be the only way to punish
19 Mr. Garcia.

20 Judge, I also was looking at the
21 guidelines, and I didn't see the need to do a Law
22 Review article on them, but under the RICO, the overt
23 acts that were prior convictions also count as
24 criminal history points, unlike in a regular
25 conspiracy case. And the life sentence is not offset

1 by his prior terms of incarceration as would normally
2 be done in a conspiracy. You know, if you did three
3 years on a marijuana case in state court as part of
4 the scope of the conspiracy, you would get an offset
5 on your federal sentencing.

6 I think in light of that, in light of these
7 prior sentences that he had that gets him to career
8 offender status from 1996 or 1997 and beyond, that it
9 is appropriate to vary down from a life sentence in
10 light of his prior service of terms of incarceration
11 and in light of his role in the offense.

12 Additionally, Judge we had worked out as
13 part of the 11(c)(1)(C), assuming the Court is so
14 inclined, that the Government would support us in the
15 request for placement at a facility that could treat
16 his hep C, and really to evaluate and treat.

17 THE COURT: Yeah, I saw that Probation
18 listed a number of possible facilities. After
19 looking at their list, did you have a favorite off
20 that?

21 MR. ADAMS: I put down the request for
22 Lexington FMC, because my understanding is it's the
23 largest treating hospital in the BOP. I also put
24 down Fort Worth because I thought they were the
25 closest. But we are agnostic on which hospital. The

1 BOP does do a Harvoni treatment, which is up to 24
2 weeks, that can cure hep C for appropriate
3 candidates. And so we hope that they will screen him
4 with an eye toward the Harvoni treatment.

5 Then, Judge, I had a fourth point on the ex
6 parte sentencing memo that we would like to approach
7 sidebar to discuss.

8 THE COURT: All right. Let me make sure
9 that I have that, what you're referring to. I had
10 your objections and worked through those, but --

11 MR. ADAMS: Judge, I'm happy to give you my
12 copy. It's 2640 in the 4268; 338 in the 4275; and
13 1005 in the 1613 case.

14 THE COURT: Let me have Ms. Bevel print
15 that out or you give me a copy so I make sure that
16 I've read that.

17 All right. Do y'all want to approach?

18 MR. ADAMS: Yes, sir.

19 (The following proceedings were held at the
20 bench.)
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1 THE COURT: This is where you included your
2 objections, right, not a career offender? That's
3 what I thought.

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1 (The following proceedings were held in
2 open court.)

3 THE COURT: All right, Mr. Adams, anything
4 further you wish to say on behalf of Mr. Garcia?

5 MR. ADAMS: Yes, sir. Thank you for your
6 patience with us at the bench. I've spoken to
7 Mr. Garcia's family. They're here in the back of
8 courtroom. They love him very much. I told them in
9 light of the 11(c)(1)(C) plea that it might be better
10 if they just shared their sentiment and their love
11 for Chris privately rather than on the record, and I
12 believe that they were fine with that. They do love
13 their son. They support him. He loves his family
14 tremendously. And so I don't believe that they have
15 any comments to make. And Chris was the same way.
16 He does not love public speaking, and he would prefer
17 to not allocute, if it pleases the Court.

18 THE COURT: All right. Well, welcome to
19 Mr. Garcia's family this morning.

20 And Mr. Garcia, I'll certainly respect your
21 right if you decide you don't want to speak, but I do
22 need to ask you as the Court: Is there anything --
23 you do have an opportunity to speak on your own
24 behalf before sentence is imposed this morning. Is
25 there anything you'd like the Court to consider,

1 anything you'd like the Court -- to say to the Court?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: All right. Thank you,
4 Mr. Garcia.

5 Ms. Armijo, do you wish to proceed to your
6 comments?

7 MS. ARMIJO: No, Your Honor. I would
8 prefer, if possible, to wait for Mr. Marcantel, who
9 is a listed victim, if possible.

10 THE COURT: All right. We'll just wait
11 here a second and see if he arrives.

12 Mr. Adams, I'm going to have Ms. Bevel hand
13 you back your copy of the sentencing memorandum, and
14 I have my copy in front of me now.

15 MR. ADAMS: Thank you.

16 MS. ARMIJO: Your Honor, may we approach?

17 THE COURT: You may.

18 (The following proceedings were held at the
19 bench.)

20 MS. ARMIJO: I was just going to say maybe
21 in the time -- to try and conserve time, we don't
22 even mind stepping out so that maybe he could have
23 his moments now to talk to his family a little bit.

24 MR. ADAMS: That would be great, if the
25 Court wants to take a break until Mr. Marcantel is

1 here.

2 THE COURT: All right.

3 MS. ARMIJO: And we'll go wait for him
4 outside, because it doesn't look like there is
5 anybody here, so he could probably at least talk to
6 his family instead of just staring at them.

7 MR. ADAMS: Mother and father, if possible.

8 THE COURT: All right.

9 (The following proceedings were held in
10 open court.)

11 THE COURT: We're going to go into recess.
12 And to conserve time, if it's all right with the
13 marshals, Mr. Garcia will talk to his parents during
14 this period of time. And so when we're done with the
15 sentencing, then we will use this time to let him
16 talk. Is that all right with you?

17 MARSHAL: That's fine, yes, Your Honor.

18 THE COURT: All right. Go ahead,
19 Mr. Garcia. Maybe if the marshals are comfortable,
20 they'll position you here at the end of the table and
21 you can talk to your parents.

22 MR. ADAMS: Thank you, Judge. Thank you,
23 Marshals.

24 (The Court stood in recess.)

25 THE COURT: All right, Ms. Armijo, we'll go

1 back on the record. Is everybody ready to go?

2 MS. ARMIJO: Yes, Your Honor.

3 THE COURT: All right. Ms. Armijo, if the
4 Government wishes to address the Court. And in your
5 remarks, if you wish to say anything further to
6 justify the variance that the Rule 11(c)(1)(C)
7 agreement calls for.

8 MS. ARMIJO: Your Honor, I think that we've
9 previously given reasons for the 11(c)(1)(C). I
10 don't think we need to put anything else on the
11 record. As I indicated, though, it is just one
12 level, as far as looking at the sentencing guideline
13 chart, from life; you know, just one level back is
14 360 to life. So we would ask the Court to take that
15 into consideration, and his acceptance of
16 responsibility, as well.

17 And just for the record, Your Honor, we do
18 have the victim in the 15-CR-4268 case,
19 Mr. Marcantel, is here. He does not need to make or
20 wish to make a statement to the Court.

21 THE COURT: All right.

22 MS. ARMIJO: But he is here to watch
23 sentencing.

24 THE COURT: All right. Good morning, Mr.
25 Marcantel.

1 All right. Any other remarks, Ms. Armijo?

2 MS. ARMIJO: No, Your Honor.

3 THE COURT: All right. I will now state
4 the sentence, but the attorneys will have a final
5 chance to make legal objections before sentence is
6 imposed.

7 MR. ADAMS: Would you like us to stand,
8 Your Honor?

9 THE COURT: It's up to you. If you wish
10 to, you can. If you want to stay seated, that's all
11 right, too. Whatever you'd like.

12 All right. The Court adopts the
13 presentence report factual findings. We made a few
14 changes to reflect accurately the plea agreement in
15 this case. But there not being any objections, the
16 Court will adopt those as its own. I think I
17 sustained one in the opinion that I've issued today,
18 and that will reflect the associate's degree that
19 Mr. Garcia has gotten at CNM.

20 The Court's also considered the sentencing
21 guideline applications. And after issuing the
22 opinion this morning, overruling the objection to
23 that, the Court adopts the sentencing guideline
24 applications in the PSR.

25 The Court's also considered the factors set

1 forth in 18 USC Section 3553(a)(1) through (7), and
2 I'll discuss those in more detail in a moment.

3 As I indicated earlier, the offense level
4 is 43 and the criminal history category is 6,
5 establishing a guideline imprisonment range of life.
6 However, under Rule 11(c)(1)(C) of the Federal Rules
7 of Criminal Procedure, the Court accepts the plea
8 agreement, which includes a specific sentence of 360
9 months as to each of case numbers: 2:15-CR-4268 and
10 2:16-CR-01613, and concurrently to the guideline
11 range noted in 2:15-CR-04275, as the Court is
12 satisfied that the agreed sentence is justified.

13 As to counts -- well, let me indicate why I
14 think that the variance is justified. The Court has,
15 as I think this record will reflect, both in our
16 discussions today as well as the opinion I've
17 issued -- that the Court has carefully considered the
18 guidelines. And in arriving at its sentence the
19 Court has taken into account not only the guidelines
20 but other sentencing goals. Specifically, the Court
21 has considered the guideline sentencing range
22 established for the applicable category of offense
23 committed by the applicable category of defendant.
24 And after careful consideration of the sentencing
25 memoranda that have been put before the Court, the

1 PSR, what I know about Mr. Garcia from much
2 litigation pretrial, as well as arguments of counsel,
3 the Court agrees with the parties that the punishment
4 that's set forth in the guidelines is not appropriate
5 for this sort of offense.

6 I then have considered the kinds of
7 sentence and range established by the guidelines.
8 And the Court agrees with the parties that a sentence
9 of 360 months, or 30 years, is adequate but also
10 necessary to reflect the seriousness of the offense,
11 promote respect for the law, provide just punishment,
12 afford adequate deterrence, both at a specific and
13 general level; protect the public. And while it is a
14 variance, depending on how you look at it, whether
15 it's one level or going from life to 360, I believe
16 the parties and the Court have worked hard to avoid
17 unwarranted sentencing disparity among defendants
18 with similar records who have been found guilty of
19 similar conduct. And because the Defendant will be
20 placed on supervised release, the Court believes that
21 with the conditions it's going to impose, it
22 effectively provides the Defendant with some needed
23 education and training and care to try to help him
24 with some of the problems that he's had in life that
25 have brought him to this point.

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1 In sum, the Court believes that the
2 proposed sentence fully and effectively reflects each
3 of the factors embodied in 18 USC Section 3553(a).
4 The Court believes the parties have proposed a
5 reasonable sentence. And by that I mean that it is
6 sufficient without being greater than is necessary to
7 comply with the purposes of punishment set forth in
8 the Sentencing Reform Act.

9 Therefore, as to Counts 10 and 11 of the
10 superseding indictment 2:15-CR-4268-024 JB, the
11 Defendant Christopher Garcia is committed to the
12 custody of the Bureau of Prisons for a term of 120
13 months.

14 As to Counts, 1, 2, 3, 4, and 5 of
15 superseding indictment 2:15-CR-04275-001 JB, the
16 Defendant is committed to the custody of the Bureau
17 of Prisons for a term of 240 months.

18 As to Count 1 of superseding indictment
19 2:16-CR-1613-002 JB, the Defendant is committed to
20 the custody of the Bureau of Prisons for a term of
21 360 months. Said terms shall run concurrently for a
22 total term of 360 months.

23 As to Counts 10 and 11 of superseding
24 indictment 2:15-CR-4268-024 JB and Counts 1, 2, and 3
25 of superseding indictment 2:15-CR-04275-001 JB, the

1 Defendant is placed on supervised release for a term
2 of three years.

3 As to Counts 4 and 5 of superseding
4 indictment 2:16-CR-4275-001 JB, and Count 1 of
5 superseding indictment 2:16-CR-1613-002 JB, the
6 Defendant is placed on supervised release for a term
7 of five years. Said terms will run concurrently, for
8 a total term of five years.

9 The Defendant must comply with the
10 mandatory and standard conditions of supervision.

11 The following special conditions will be
12 imposed. I'm going to state five of them, and then
13 I'll give the justification for these first five.

14 First, you must participate in an
15 outpatient substance abuse treatment program and
16 follow the rules and regulation of that program. The
17 probation officer will supervise your participation
18 in the program, provider, location, modality,
19 duration, intensity, et cetera. You may be required
20 to pay all or a portion of the cost of the program.

21 Second, you shall waive your right of
22 confidentiality and allow the treatment provider to
23 release treatment records to the probation officer
24 and sign all necessary releases to enable the
25 probation officer to monitor your progress. The

1 probation officer may disclose the presentence
2 report, any previous substance abuse evaluations,
3 and/or other pertinent treatment records to the
4 treatment provider.

5 Third, you must not use or possess alcohol.

6 Fourth, you must not knowingly purchase,
7 possess, distribute, administer, or otherwise use any
8 psychoactive substances, e.g. synthetic cannabinoids,
9 synthetic cathinones, et cetera, that impact your
10 physical or mental functioning, whether or not
11 intended for human consumption.

12 And fifth, you must submit to substance
13 abuse testing to determine if you have used a
14 prohibited substance. Testing may include urine
15 testing, the wearing of a sweat patch, or remote
16 alcohol testing system, an alcohol monitoring
17 technology program and/or any form of prohibited
18 substance screening or testing. You must not attempt
19 to obstruct or tamper with the testing methods. You
20 may be required to pay all or a portion of the cost
21 of the testing.

22 These five conditions are imposed based on
23 the history and characteristics of the defendant, who
24 has a lengthy history of heroin abuse despite prior
25 participation in substance abuse treatment.

1 Additionally, these five conditions will assist the
2 Defendant in remaining sober during his term of
3 supervised release.

4 The next condition is: You must submit to
5 a search of your person, property, residence,
6 vehicle, papers, computers as defined in 18 USC
7 Section 1030(e)(1), other electronic communications
8 or data storage devices or media or office under your
9 control. The probation officer may conduct a search
10 under this condition only when reasonable suspicion
11 exists in a reasonable manner at a reasonable time
12 for the purpose of detecting illegal narcotics,
13 alcohol, firearms, ammunition, other dangerous
14 weapons, and any other contraband. You must inform
15 any residents or occupants that the premises may be
16 subject to a search.

17 This condition is imposed based on the
18 nature and circumstances of the federal offenses for
19 which you're being sentenced today, which involved a
20 RICO conspiracy in which the defendant was an SNM
21 member. This condition is also imposed based on the
22 history and characteristics of the Defendant, who has
23 arrests and/or convictions for aggravated battery,
24 possession of firearms, conspiracy to commit murder,
25 and drug trafficking.

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1 Additionally, as a convicted felon, the
2 Defendant is prohibited from possessing firearms and
3 ammunition. This condition is also meant to protect
4 the public from further violent crimes by the
5 Defendant, to assist the supervising officer in
6 ensuring the Defendant remains compliant with all
7 conditions of release, and for officer safety.

8 I will now state two more conditions, and
9 then I'll give the justification for those two.

10 First, you must participate in a mental
11 health treatment program and follow the rules and
12 regulations of that program. The probation officer,
13 in consultation with the treatment provider, will
14 supervise your participation in the program. You may
15 be required to pay all or a portion of the cost of
16 the program.

17 Second, you shall waive your right of
18 confidentiality and allow the treatment provider to
19 release treatment records to the probation officer,
20 and sign all necessary releases to enable the
21 probation officer to monitor your progress.

22 The probation officer may disclose the
23 presentence report, any previous mental health
24 evaluations, and/or other pertinent treatment records
25 to the treatment provider.

1 These two conditions are imposed based on
2 the history and characteristics of the Defendant, who
3 has previously been diagnosed with PTSD and
4 antisocial personality disorder. As such, a mental
5 health evaluation will determine if the Defendant
6 will benefit from counseling and/or medication which
7 is meant to help him deal with his feelings in a
8 positive manner and to deter him from relapsing or
9 resorting to controlled substances in the future
10 because of his mental health issues.

11 I'm now going to state two more conditions,
12 and then I'll give the justification for these two
13 conditions.

14 First, you must not communicate or
15 otherwise interact with co-defendants,
16 coconspirators, without prior approval of the
17 probation officer.

18 Second, you must not communicate or
19 otherwise interact with any known gang member without
20 prior approval of the probation officer.

21 These two conditions are imposed based on
22 the nature and circumstances of the federal offenses
23 for which you're being sentenced this morning, which
24 involved RICO conspiracy among SNM members, including
25 the Defendant, to commit murders and assaults.

1 Moreover, it is also meant to deter the Defendant
2 from entering into new conspiracies similar to the
3 federal offenses for which he's being sentenced today
4 with other gang members, and to protect the public
5 from future criminal schemes of the Defendant covered
6 by the RICO Act.

7 Next, you must reside in a residential
8 reentry center for a term of six months. You must
9 follow the rules and regulations of the center. This
10 condition is imposed to assist the Defendant with
11 transitioning back into society after serving a
12 lengthy prison sentence. Additionally, as I'll talk
13 about in a moment, this condition is in lieu of a
14 fine.

15 And then, finally, you must not communicate
16 or otherwise interact with the victim or victims,
17 either directly or through someone else, without
18 prior approval of the probation officer. This
19 condition is imposed based on the nature and the
20 circumstances of the federal offense for which you're
21 being sentenced today, which involved the Defendant
22 conspiring to commit murder of several individuals.

23 This condition is also meant to protect the
24 victims and to deter the Defendant from further
25 contact with them. The Court finds the Mandatory

1 Restitution Act of 1996 is applicable in this case.
2 No amount of restitution has been requested, so I
3 don't see any reason to leave it open unless
4 somebody -- all right.

5 PROBATION OFFICER: No, Your Honor.

6 THE COURT: So given that no restitution
7 has been requested, the Court will not order any
8 restitution amount or schedule it for further
9 proceedings.

10 Based on the Defendant's lack of financial
11 resources, as I mentioned a minute ago, the Court
12 will not impose a fine. The Court also considered
13 alternative sanctions, such as community service,
14 location monitoring, or a halfway house in lieu of
15 all or a portion of the fine, and concludes that the
16 total combined sanction without a fine or alternative
17 other than the halfway house is sufficiently
18 punitive.

19 In accordance with USSG section 5E1.2E, the
20 Court has imposed a special condition that the
21 Defendant reside at a residential reentry center.

22 The Defendant shall pay a special
23 assessment of \$100 as to each count of conviction for
24 a total of \$800, which is due immediately.

25 Let me ask both counsel if they know of any

1 reason why the sentence should not be imposed as the
2 Court has stated it, other than what may have already
3 been argued to the Court?

4 MS. ARMIJO: No, Your Honor. Thank you.

5 THE COURT: Mr. Adams?

6 MR. ADAMS: No, sir, Judge. I was a little
7 confused at the beginning. I thought you had said
8 4268 and 240 months, and I must have misheard that.
9 You must have said 4275, 240 months.

10 THE COURT: Let's see. I did say 4268, 120
11 months. Is that not correct? And then with 4275,
12 240 months. And then 1613, 360; is that correct?

13 MR. ADAMS: I thought it was 360 for both
14 the 4268 and the 1613 under the plea agreement, but I
15 might be wrong on that.

16 MS. ARMIJO: Well, the 4268, though, the
17 maximum is 240 because it's only 120. Well, wait.
18 And how many counts is he in in 4268? I'm sorry.

19 MR. ADAMS: I thought it was Counts 10 and
20 11.

21 MS. ARMIJO: Okay, yeah. Then those are
22 conspiracies to murder? Oh, no, felon in possession,
23 10. So they're 10 years each.

24 MR. ADAMS: So it's 120 on the 4268, and
25 240 on the 4275, the stand-alone drug case.

1 MS. ARMIJO: Correct.

2 THE COURT: And that's what I thought I
3 said; right, Ms. Cord?

4 PROBATION OFFICER: Yes, Your Honor, you
5 did.

6 MR. ADAMS: Everyone tracked that except
7 for me. I apologize.

8 THE COURT: So everybody is in agreement?

9 MS. ARMIJO: Yes, Your Honor.

10 THE COURT: Did I say it correct now?

11 MR. ADAMS: Yes, sir. The only additional
12 thing we would request, and the parties had agreed to
13 in the plea, is credit for time served back to his
14 date of arrest on December 3, 2015. And that is
15 important to order, because on 1613, that indictment
16 didn't occur for another year.

17 MS. ARMIJO: I think it was just four
18 months later.

19 MR. ADAMS: But at any rate, we had agreed
20 that on all the cases, that December 3, 2015, would
21 be credit for time served.

22 THE COURT: I don't think that I have the
23 ability to order credit for time served, because
24 that's a calculation the BOP will have to make. And
25 if there is a disagreement, then Mr. Garcia has to

1 run it through the BOP, and it comes back to me if
2 there is a disagreement. But I think we have
3 accurately stated on the release status on page 2 --

4 MR. ADAMS: Yes.

5 THE COURT: -- that the Defendant has been
6 in continuous custody since his arrest on December 3,
7 2015, and that is 1,255 days, or three years, five
8 months, and eight days in custody, through May 10,
9 2019. And you agree with that statement; correct?

10 MR. ADAMS: I agree with that statement.

11 THE COURT: And you agree with that, Ms.
12 Armijo?

13 MS. ARMIJO: Yes, Your Honor. And I agree
14 that Bureau of Prisons will do what they do, but I
15 can't imagine that they wouldn't give him credit,
16 given that it's the same conduct, so to speak, all
17 racketeering activities in all of these cases.

18 THE COURT: And I think Probation is in
19 agreement. I don't have a disagreement. So we're
20 sending this to the Bureau of Prisons and we're all
21 saying we don't have a disagreement. I can't order
22 the BOP, but I don't have a disagreement with the
23 fact that he is likely and should get credit. But it
24 may have to come back a different way.

25 Is that acceptable, Mr. Adams?

1 MR. ADAMS: It is. I have nothing else.

2 THE COURT: It is ordered, then, that the
3 sentence is imposed as the Court has stated it.

4 Mr. Garcia, you can appeal your conviction
5 if you believe that your guilty plea was somehow
6 unlawful or involuntary or if there is some other
7 fundamental defect in the proceedings that was not
8 waived by your guilty plea. You also have a
9 statutory right to appeal your sentence under certain
10 circumstances, particularly if you think the sentence
11 is contrary to law. However, a defendant may waive
12 those rights as part of a plea agreement, and you
13 have entered into a plea agreement which waives some
14 of your rights and, in some cases, all of your rights
15 to appeal the sentence itself.

16 You do have a carve-out in the 4275 that in
17 that case you will be allowed to appeal the opinion
18 that I just issued that you are a career offender
19 based on your prior conviction for aggravated
20 battery, great bodily harm. So there is a carve-out
21 there.

22 Such waivers are generally enforceable, but
23 if you believe for any reason that your waiver is
24 unenforceable, you can present that theory to the
25 appellate court.

1 You have the right to apply for leave to
2 appeal in forma pauperis. And what that means is,
3 the Clerk of the Court will prepare and file a notice
4 of appeal upon your request if you're unable to pay
5 the cost of an appeal. With very few exceptions, any
6 notice of appeal must be filed within 14 days of the
7 entry of judgment.

8 So, Mr. Garcia, do you understand that
9 pursuant to the plea agreement -- you've got two of
10 them -- in one, the one that's in 4268, you waive all
11 of your rights to appeal -- let's see exactly the
12 wording -- your convictions under that and any
13 sentence that is imposed, in conformity with the Rule
14 11(c)(1)(C) plea agreement, which this one was, so
15 you've effectively waived the right to appeal the
16 sentence in that matter.

17 But with regards to 4275, you've waived all
18 your rights to appeal the conviction and any sentence
19 imposed in conformity with the Rule 11(c)(1)(C) plea
20 agreement in that case, with the exception that
21 you'll be allowed to appeal the Court's ruling that
22 you are a career offender based on your prior
23 conviction for aggravated battery, great bodily harm.

24 So you understand your rights to appeal?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: All right. All right, Counsel,
2 you have copies of the presentence report. You have
3 the new Attachment A, and you have the addendum to
4 the presentence report.

5 I guess the other thing we need to do is:
6 I believe you have agreed, Ms. Armijo, to dismiss
7 Count 12 of what I will call the DeLeon second
8 superseding indictment and Count 6 of the Baca
9 indictment. Am I correct?

10 MS. ARMIJO: Correct.

11 THE COURT: And do you move at this time to
12 dismiss those? Do you have a motion and order? Are
13 you going to provide it after the hearing?

14 MS. ARMIJO: I will provide it after the
15 hearing, Your Honor.

16 THE COURT: And I assume, Mr. Adams, there
17 is no objection to that motion and order to dismiss
18 those two counts out of those two indictments?

19 MR. ADAMS: No, sir, no objection.

20 THE COURT: Anything else we need to
21 discuss while we're together? Anything else I can do
22 for you, Ms. Armijo?

23 MS. ARMIJO: No, Your Honor, thank you.

24 THE COURT: Mr. Adams?

25 MR. ADAMS: Judge, the final thing to --

1 THE COURT: And I will include the language
2 that we scripted out here at the beginning about
3 designation.

4 MR. ADAMS: The only final thing is, it's
5 been an honor to represent Mr. Garcia in your court.
6 I believe Ms. Sirignano, who is a member of the Tenth
7 Circuit Court of Appeals, is going to evaluate
8 whether or not to pursue an appeal. I'm not a member
9 of the Tenth Circuit, and if the Court would see fit
10 to discharge me tonight or tomorrow, I would
11 appreciate that.

12 THE COURT: Any objection to that, Ms.
13 Armijo?

14 MS. ARMIJO: No, not at all.

15 THE COURT: Any objection to that,
16 Mr. Garcia?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: All right. So circulate an
19 order with the other defendants in the case and
20 submit it to me, and I'll grant the motion.

21 MR. ADAMS: Yes, sir. Thank you very much.

22 THE COURT: Anything else, Mr. Adams?

23 MR. ADAMS: No, Your Honor.

24 THE COURT: Counsel, I appreciate your
25 assistance on this matter. Mr. Garcia, good luck to

1 you. You stay safe. Okay?

2 THE DEFENDANT: Thank you, Your Honor.

3 THE COURT: I hope you'll be able to live
4 into your 60s and get a chance to move back into
5 society, and good luck to you.

6 THE DEFENDANT: Thank you, Your Honor.

7 THE COURT: Good luck to you, Mr. Garcia,
8 and good luck to your family.

9 Do you want the court cleared?

10 MS. ARMIJO: No.

11 THE COURT: All right. We'll be in recess
12 for about 15 minutes -- I guess 45 minutes.

13 (The Court stood in recess.)

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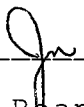
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2 STATE OF NEW MEXICO

3
4 C-E-R-T-I-F-I-C-A-T-E

5 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,
6 Official Court Reporter for the State of New Mexico,
7 do hereby certify that the foregoing pages constitute
8 a true transcript of proceedings had before the said
9 Court, held in the District of New Mexico, in the
10 matter therein stated.

11 In testimony whereof, I have hereunto set my
12 hand on this 16th day of July, 2019.

13
14 
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